Editor's note: Reconsideration denied by order dated Jan. 16, 1979

DENNIS POTTS

IBLA 78-525 Decided August 28, 1978

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting application for geothermal resources lease. U 39801.

Set aside and remanded.

1. Geothermal Leases: Applications: Generally

A decision rejecting an application for a geothermal resources lease because the United States does not own the mineral resource will be set aside and the case remanded when the land status records reflect ostensible legal title in the Federal Government.

APPEARANCES: Dennis Potts, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dennis Potts appeals from a decision dated June 12, 1978, wherein the Utah State Office, Bureau of Land Management, rejected his application U 39801 for a geothermal resources lease on S 1/2 sec. 16, S 1/2 sec. 17, T. 30 S., R. 12 W., Salt Lake meridian, Utah, for the reason that the United States does not own the mineral interests applied for.

Appellant contends that the United States does own the geothermal rights in the subject lands because there was no reservation of any mineral interest in the warranty deed which reconveyed these lands to the United States, and that as he is the first applicant under the Geothermal Steam Act he should receive the lease he requests.

The record indicates that the subject lands were reconveyed to the United States as base for an exchange, U 0519, under sec. 8, Taylor Grazing Act, 43 U.S.C. § 315g (1970), by a warranty deed dated March 30, 1956. The deed did not reserve any mineral rights to the grantors, even though the application to make the exchange proposed that it would be an exchange of surface rights only, with each party

retaining its mineral rights. The record clearly substantiates that BLM entered into the exchange with the understanding that no minerals in the offered lands would vest in the United States. Following completion of the exchange by issuance of patent number 1164557 on September 16, 1956, in which all minerals in the lands were reserved to the United States, the offered lands were opened to entry under applicable nonmineral public land laws pursuant to a notice published at 23 FR 978-980 (1958). The notice stated that the minerals in the said S 1/2 sec. 16, S 1/2 sec. 17, T. 30 S., R. 12 W., were not conveyed to the United States. The status plat for T. 30 S., R. 12 W., indicates only that the S 1/2 sec. 16, S 1/2 sec. 17, were conveyed to the United States by warranty deed, and does not show that any minerals were reserved to the grantor.

[1] The reason stated in the State Office decision for rejection of this application is not supported by the land status reflected on the Master Title Plat. Accordingly, the decision below must be set aside and the case remanded for further consideration. This is not to suggest that equitable title to the geothermal resources in the lands in issue is necessarily vested in the Federal Government, although the legal title is ostensibly now there.

We point out as information to appellant that issuance of geothermal resources leases is discretionary. 43 CFR 3210.4. The mere filing of an application for a geothermal resources lease creates no vested right to receive the lease. A geothermal resources lease may be issued only after determination that the geothermal resources involved are owned by the United States, and that the issuance of the lease will be in the public interest.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set side, the appeal is dismissed, and the case remanded for further consideration.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge